

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

VALERO TERRESTRIAL CORPORATION, and
SOLID WASTE SERVICES, INC.,

Defendants

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) Civil Action No. _____
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) Judge _____
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CONSENT DECREE

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Defendants

CONSENT DECREE

WHEREAS, Plaintiff the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has concurrently filed a complaint in this action pursuant to Section 113 of the Clean Air Act ("Act"), 42 U.S.C. § 7413, against Defendants Valero Terrestrial Corporation and Solid Waste Services, Inc. for alleged violations of Sections 111 and 501-507 of the Clean Air Act ("Act"), 42 U.S.C. §§ 7411 and 7661-7661f, and their implementing regulations, including the New Source Performance Standards for Municipal Solid Waste Landfills, 40 C.F.R. Part 60 Subpart WWW;

WHEREAS, Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, notice of commencement of this action has been given to the State of West Virginia as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b);

WHEREAS, the United States and Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and 42 U.S.C. § 7413(b) and also has personal jurisdiction over the Defendants.

2. Venue lies in this District pursuant to Section 113(b) of the Act, and 28 U.S.C. §§1391(b) and (c), and 1395(a) because the violations alleged in the Complaint are alleged to have occurred in this District and the Facility is located in this District.

3. Defendants shall not challenge the terms of this Consent Decree or the Court's jurisdiction to enter and enforce this Consent Decree. Solely for purposes of this Consent Decree, the underlying complaint, and any actions to enforce the Consent Decree, Defendants waive all objections and defenses they may have to jurisdiction of the Court or venue in this District.

II. PARTIES BOUND

4. This Consent Decree is binding upon the United States and Defendants and any successors, assigns or other entities or persons otherwise bound by law. Any change in ownership or corporate or legal status of Defendants, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendants under this Consent Decree.

III. DEFINITIONS

5. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Act" shall mean the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*;
- b. "Complaint" shall mean the complaint filed by the United States against

Defendants in this action;

- c. "Consent Decree" or "Decree" shall mean this Decree;

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business the next business day;

e. "Defendants" shall mean Valero Terrestrial Corporation and Solid Waste Services, Inc.;

- f. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States of America;
- g. "Effective Date" shall mean the date on which this Decree is entered by the Court;
- h. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States of America;
- i. "Facility" shall mean the Brooke County Sanitary Landfill located in Brooke County, West Virginia;
- j. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;
- k. "Parties" shall mean the United States and the Defendants;
- l. "Section" shall mean a portion of this Decree identified by a roman numeral;
- m. "State" shall mean the State of West Virginia;
- n. "United States" shall mean the United States of America, its departments, agencies and instrumentalities acting on behalf of EPA.

IV. CIVIL PENALTY

6. Defendants shall pay to the United States a civil penalty of \$300,000.00 plus interest (the "Settlement Amount") in accordance with the provisions of this Section. The total Settlement Amount shall be \$306,000.00. Payments shall be due according to the following

schedule:

- a. Within 30 days after the Effective Date of this Consent Decree, Defendants shall pay the sum of \$100,000.00;
- b. Within one year of the Effective Date of this Consent Decree, Defendants shall pay the sum of \$100,000.00 plus interest accruing from the Effective Date, for a total of \$104,000.00;
- c. Within two years of the Effective Date of this Consent Decree, Defendants shall pay the sum of \$100,000.00 plus interest accruing from the Effective Date, for a total of \$102,000.00.

7. Payments shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Defendants by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of West Virginia following lodging of the Decree. At the time of payment, Defendants shall send written notice to the United States that payment has been made in accordance with Section VIII of this Decree and to:

Docket Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Barbara Borden (3PM30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

Such notice shall reference DOJ case number 90-5-2-1-08262 and the civil action number of this case.

8. In the event that any payment required by Section IV of this Decree is not received when due, the United States may declare the full remaining principal amount of the Settlement Amount to be immediately due and owing, and interest calculated at the rate of two percent per year shall continue to accrue on the unpaid balance through the date of payment.

9. Defendants' obligations to pay the Settlement Amount and any other payments required by this Consent Decree shall be joint and several. In the event of the failure of one of the Defendants to make a payment required under this Consent Decree, the remaining Defendant shall be responsible for the payment.

10. The Settlement Amount due under this Section is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and is not deductible for federal tax purposes.

V. STIPULATED PENALTIES

11. In the event that any payment required by Section IV is not received when due, Defendants shall be in violation of this Consent Decree and shall pay to EPA, in addition to the interest required by Paragraph 8, a stipulated penalty of \$1,000.00 per day that such payment is late.

12. Any stipulated penalty under this Section is due and payable within 30 days of the date of the demand for payment by the United States and shall be made by a certified or cashier's

check in the amount due, payable to the "U.S. Department of Justice," referencing DOJ number 90-5-2-1-08262, and U.S. Attorney's Office File Number 2004V00079. Payments made pursuant to this Section shall be identified as "Stipulated Penalties" and delivered to

Office of the United States Attorney for the Northern District of West Virginia
PO Box 571
1125 Chapline Street, Suite 3000
Wheeling, WV 26003.

At the time of each stipulated penalty payment, Defendants shall send written notice to the United States that payment has been made in accordance with Section VIII of this Decree.

Notice shall also be sent to:

Docket Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Barbara Borden (3PM30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

Such notice shall reference DOJ case number 90-5-2-1-08262 and the civil action number of this case.

13. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Section.

14. Any stipulated penalty due under this Section is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and is not deductible for federal

tax purposes.

15. If Defendants fail to pay a stipulated penalty according to the terms of this Section, Defendants shall be liable for interest on such penalties accruing as of the date payment became due.

16. Stipulated penalties are not the exclusive civil remedy of the United States for Defendants' violations of this Consent Decree. Subject to the provisions of Section VI of this Consent Decree (Effect of Settlement / Reservation of Rights), the stipulated penalties provided for in this Section shall be in addition to any other rights, remedies or sanctions available to the United States for Defendants' violation of this Consent Decree or applicable law.

VI. EFFECT OF SETTLEMENT / RESERVATION OF RIGHTS

17. Complete performance by Defendants of all of their obligations under this Consent Decree shall resolve the civil liability of the Defendants for the violations alleged in the Complaint through the date of lodging of this Consent Decree.

18. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations or under other federal laws, regulations or permit conditions except as expressly specified in Paragraph 17. Nothing herein shall be construed to limit in any way the United States' authority to pursue criminal sanctions in any proceedings pursuant to Sections 113(c) of the Act, 42 U.S.C. § 7413(c).

19. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third party not a party to this Consent Decree, nor does it limit the rights of any third party not a party to this Consent Decree against any Defendant, except as otherwise provided by law. Provided, however, that the execution of this Consent Decree by Defendants is not an admission or violation of the Act or applicable regulations and shall not be considered as such.

20. This Consent Decree shall not be construed to create rights in or grant any cause of action to any third party not a party to this Consent Decree.

21. This Consent Decree does not alter or relieve Defendants' responsibility to comply with the Clean Air Act, 42 U.S.C. §§7401-7642 et seq, or any other federal, state or local laws, regulations, or permit conditions. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits. Compliance with this Consent Decree shall not be a defense to any action commenced pursuant to such laws or regulations, except as provided in Paragraph 17.

VII. COSTS

22. The Parties shall bear their own costs of this action, including attorneys' fees, except that if the United States brings an action to enforce this Consent Decree, Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

VIII. NOTICES

23. Unless otherwise specified herein, whenever notifications, submissions or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08262

and

Donna Mastro
Sr. Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

To Defendants:

William F. Fox
General Counsel
J.P. Mascaro & Sons
2650 Audubon Road
Audubon, PA 19403

24. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

25. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties

in writing.

IX. RETENTION OF JURISDICTION

26. The Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

X. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

27. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if comments are received that disclose facts or considerations indicating that the Consent Decree is inappropriate, improper or inadequate. Defendants consent to entry of the Consent Decree without further notice.

28. If for any reason this Court should decline to approve the Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XI. SIGNATORIES / SERVICE

29. Each undersigned representative of Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

30. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

31. Defendants agree not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

32. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XII. INTEGRATION

33. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding or promise constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XIII. FINAL JUDGMENT

34. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants. The

Court finds that there is no reason for delay and therefore enters this judgment as a final judgment under *Fed. R. Civ. P.* 54 and 58.

Entered this _____ day of _____, 2006.

UNITED STATES DISTRICT JUDGE
Northern District of West Virginia

FOR THE UNITED STATES OF AMERICA:

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment & Natural Resources Division

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section

Date: _____

4/8/06

CATHERINE MALININ DUNN
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611
202- 514-1461

Date: _____

4/5/06

FOR THE UNITED STATES OF AMERICA:

THOMAS E. JOHNSTON
United States Attorney
Northern District of West Virginia

Date: _____

BETSY C. JIVIDEN
Assistant United States Attorney
Office of the United States Attorney
for the Northern District of West Virginia
P.O. Box 571
Wheeling, WV 26003
304-234-0100
WV Bar Number 3592

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

DONALD S. WELSH
Regional Administrator
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

Date: _____

LYDIA ISALES
Acting Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

Date: _____

DONNA L. MASTRO
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

Date: _____

FOR DEFENDANT VALERO TERRESTRIAL CORPORATION

~~WILLIAM F. FOX, JR.~~ ✓
General Counsel
J.P. Mascaro & Sons
2650 Audubon Road
Audubon, PA 19403

Date: 3/28/06

FOR DEFENDANT SOLID WASTE SERVICES INC.

~~WILLIAM F. FOX, JR.~~ ✓
General Counsel
J.P. Mascaro & Sons
2650 Audubon Road
Audubon, PA 19403

Date: 3/28/06